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December 18, 2019

**VIA ECF**

The Honorable Joan N. Ericksen  
United States District Court  
12W U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

**RE: MDL 2666, *In re Bair Hugger Forced Air Warming Devices Prods. Liab. Litig.***

Dear Judge Ericksen:

Defendants submit this letter to respectfully request that the Court issue an order to address cases direct filed or transferred while Plaintiffs' appeal from the Court's summary judgment is pending. A proposed order is enclosed.

Since the Court's summary judgment order on July 31, Defendants have removed from state court and requested the transfer of two cases to this MDL. One case (*Barger*) was transferred to the MDL from the Southern District of New York without objection on November 21. The other (*Williams*) was transferred from the Western District of Missouri this morning, over the plaintiff's objection. In its transfer order in *Williams*, the JPML noted that the Bair Hugger MDL is not over while the appeal is pending, and that the Panel has continued to transfer newly filed tag-alongs during and after the pendency of appeal in other MDLs.

Defendants propose that this Court handle these and any other direct-filed or newly transferred cases as the *Mirena* MDL court has done. *See In re Mirena IUD Prods. Liab. Litig.*, No. 7:13-mc-02434-CD-LMS, Dkt. No. 231 (S.D.N.Y. Nov. 14, 2016) (copy enclosed). The *Mirena* MDL court issued an order providing that plaintiffs whose claims were transferred to the MDL after summary judgment and while the appeal was pending would be conditionally dismissed without prejudice pending the Second Circuit's decision. In the event that the summary judgment order was reversed, in whole or in part, those claims would be reinstated and governed by the original filing date for statute of limitations purposes. If the Second Circuit affirmed, then those plaintiffs would be required to show cause why their claims should not be dismissed with prejudice under the summary judgment order. Such an approach will allow for the transfer of pending and future claims that belong in the MDL, while avoiding the inefficiencies of further litigation pending appeal.

Defendants request that a similar order be entered here to address both direct-filed and transferred cases, and have enclosed a copy of that proposal.

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Plaintiffs have informed us that they oppose this *Mirena*-based approach. Because the issue has now come to a head with the transfer of *Barger* and *Williams*, Defendants feel the need to raise the issue with the Court.

Thank you for your time and consideration of this matter.

Sincerely,

s/Benjamin W. Hulse

Benjamin W. Hulse

Enclosures